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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/596,499 06/19/00 STREIFF

F KOCH. 67582

EXAMINER

IM52/1011

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COOLEY, C

ART UNIT

PAPER NUMBER

1723

DATE MAILED:

10/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/596,499**

Applicant(s)  
**Streiff**

Examiner  
**Charles Cooley**

Art Unit  
**1723**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 Aug 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-11 and 14-22 is/are allowed.
- 6) ☒ Claim(s) 12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

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## OFFICE ACTION

1. This application has been assigned to Technology Center 1700, Art Unit 1723 and the following will apply for this application:

a. **Please direct all written correspondence with the correct application serial number for this application to Art Unit 1723.**

b. Telephone inquiries regarding this application should be directed to the Technology Center 1700 receptionist at ☎(703) 308-0651 or to the Examiner at ☎(703) 308-0112. Official facsimile correspondence filed before a final office action should be transmitted to ☎(703) 872-9310. Official facsimile correspondence which responds to a final office action should be transmitted to ☎(703) 872-9311.

c. Inquiries regarding application status, matching responses with applications, patent term questions, locating and retrieval of applications, incomplete office actions, requests for copies of office actions and/or references, requests to remail office actions, small/large entity status, or other administrative inquiries should be directed to the **Technology Center 1700 Customer Service Center** at ☎(703) 306-5665.

### ***Priority***

2. Acknowledgment is made of applicant's claim for domestic priority under 35 U.S.C. § 119(e).

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***Specification***

3. The abstract is acceptable.
4. The title is acceptable.

***Claim Rejections - 35 U.S.C. § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Carter in view of King '440.

Carter discloses the recited static mixer saddle element 10 in Figs. 1-3 including the recited ring-shaped structure 12 defining a fluid flow path extending along an axis and having first and second edge surfaces located in parallel transverse planes perpendicular to the axis of the ring-shaped structure 12 (Fig. 3); mixer components 13-20 located in the flow path; and the mixer components 13-20 being arranged in intersecting oblique planes disposed at an angle relative to the axis. Carter does not disclose the saddle elements being arranged with the second edge surfaces thereof

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disposed in a mated, contacting relationship or the arrangement of the surfaces as set forth in claim 13. King '440 discloses static mixer saddle elements 10, 11, 12, 20, etc. which are arranged with the second edge surfaces thereof in a mated, contacting relationship 20 as seen in Fig. 3. That is, the bottom edge surface of first element 10 can be arbitrarily deemed the second edge surface of element 10 and the top edge surface of second element 11 can be arbitrarily deemed the second edge surface of element 11. Accordingly, the second edge surfaces of the first and second saddle elements 10, 11 are arranged with the second edge surfaces thereof disposed in mated, contacting relationship as seen in Figure 3 of King '440. In a like manner, the bottom edge surface of third element 13 can be arbitrarily deemed the second edge surface of element 13 and the top edge surface of fourth element 20 (labeled as 20 in Fig. 3) can be arbitrarily deemed the second edge surface of element 20. Accordingly, the second edge surfaces of the third and fourth saddle elements 13, 20 are arranged with the second edge surfaces thereof disposed in mated, contacting relationship as seen in Figure 3 of King '440. Furthermore, the bottom edge surface of second element 11 can be arbitrarily deemed the first edge surface of element 11 and the top edge surface of third element 13 can be arbitrarily deemed the first edge surface of element 13. Accordingly, the first edge surfaces of the second and third saddle elements 11, 13 are arranged with the first edge surfaces thereof disposed in mated, contacting relationship as seen in Figure 3 of King '440. It would have been obvious to

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one having ordinary skill in the art, at the time applicant's invention was made, to have disposed the saddle elements of Carter in a mating, contacting relationship as disclosed by King '440 for the purposes of generating multiple divisions of the input stream (Col. 3, lines 52-58) and to allow for a nested or interlocking relationship between the saddle elements (Col. 3, lines 35-39).

***Allowable Subject Matter***

7. Claims 1-11 and 14-22 are allowable over the prior art of record.

***Response to Amendment***

8. Applicant's arguments filed 28 AUG 2001 have been fully considered but they are not deemed to be persuasive.

Applicant fails to appreciate the broad scope of claims 12 and 13 since the particular edge surfaces referenced in the claims can be arbitrarily assigned in King '440 as explained in the rejection to meet the claims. Nothing exists in the claim language to preclude such an interpretation (such as a particular structural feature of the edges which is lacking from the prior art).

Applicant states the references do not use a plurality of elements which are stacked in a flip-flopped arrangement or the elements being upside down relative to the other one. Although such language would not be seen as defining over the rejection,

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Applicant should note no such language appears in claims 12-13. Such arguments are therefore of no patentable consequence because it is well settled that features not claimed may not be relied upon in support of patentability. *In re Self*, 671 F.2d 1344, 213 USPQ 1 (CCPA 1982). Although a claim should be interpreted in light of the specification disclosure, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

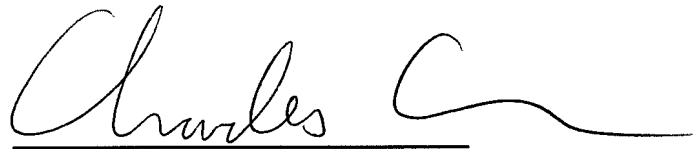
A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION. **ANY RESPONSE FILED AFTER THE MAILING DATE OF THIS FINAL REJECTION WILL BE SUBJECT TO THE PROVISIONS OF MPEP 714.12 AND 714.13.**

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Charles Cooley whose telephone number is ☎ (703) 308-0112.

11. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1700 receptionist whose telephone number is ☎ (703) 308-0651.

Dated: 9 October 2001

A handwritten signature in cursive script, appearing to read "Charles Cooley", written over a horizontal line.

**Charles Cooley**  
**Primary Examiner**  
**Art Unit 1723**